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Date: March 8, 2001

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PATENT

Paper No.

File: Kor1-CIP

AF/37
3728
#32
Reply Brief
5-12-01
JW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	:	Charles Kormanik, Jr.
Serial No.	:	08/802,472
Filed	:	February 18, 1997
For	:	THEMATIC PACKAGING SYSTEM
Group Art Unit	:	3208
Examiner	:	Luby, M.

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

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TRANSMITTAL LETTER

SIR:

Transmitted herewith for filing in the above-identified patent application is the following:

1. Reply Brief on Appeal on Behalf of Appellant.

The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

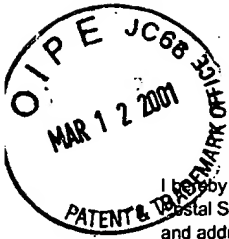
Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,

Date: 8 March 2001

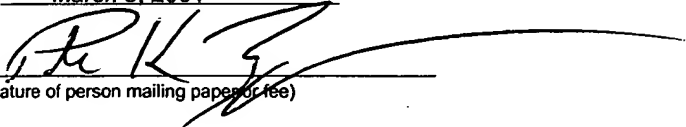
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**REPLY BRIEF ON APPEAL
ON BEHALF OF APPELLANT**

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I. APPELANTS REPLY TO EXAMINER'S RESPONSE

It is respectfully submitted that no one would ever have thought of putting rain gear in golf balls (claim 25) from Agapiou, etc., except for this rejection. Further, the claims require method steps, not apparatus. The claimed method steps, correctly construed, are not anticipated or rendered obvious by the safety awareness kit of the squashed skunk and tire of Agapiou.

Even if the Examiner were correct on all responsive points, the Final Rejection is still incorrect because the Examiner has misconstrued the claims, and Agapiou does not teach what is actually claimed. See Appellant's Brief, Paragraphs 1-2 at pages 13-14.

Under the Examiner's view of the claims and reference, the toy and tire are used together to teach safety awareness, but under the claim requirements, the toy would have to be used with a real tire, which was not contemplated in Agapiou. That is, the claims require the contents of the package (e.g., rain gear) to be used in REAL golf, for example. See particularly claim 25, and consistent therewith, Agapiou does not teach the following claim 5 requirement:
...in which the article is used.

With more particular regard to the Examiner's Answer, the Examiner's contentions are respectfully traversed. As to paragraph 1 of the Examiner's Response (page 5), the Examiner points to the title of the patent. However, the title of the invention is a Safety Awareness Kit Including Toy Figures, and thus it is the kit or combination of the tire and the toy that are used together for safety awareness. Figure 1 -- the tire alone -- does not convey the information about a safety activity, etc. The Board is respectfully requested to examine the tire in Figure 1 and ask themselves what information the tire conveyed to one of ordinary skill in the art at the time of the invention.

As to paragraph 2 of the Examiner's Response, the Examiner maintains that:
the information and safety activity conveyed is "a safety

activity for learning about safety procedures around motor vehicles.”

Respectfully, this does not make sense on its face. This purported contorted information is not visually conveyed by the Agapiou tire, and the Board is respectfully requested to examine Agapiou's tire Figure 1 and ask themselves whether the tire alone conveyed this information to one of ordinary skill in the art prior to the invention. Regardless, though, Agapiou does not teach the following claim 5 requirement: ...in which the article is used.

As to paragraph 3 of the Examiner's Response to Appellant's argument that *the tire does not teach...* the Examiner contends that all figures and the specification teach

“a safety activity for learning about safety procedures around motor vehicles.”

Actually, this is not correct, either. Attention is respectfully drawn to the tire alone of Figs. 1 and its side view in Fig. 2 (the tire is the same in Fig's 1 and 3, though Fig. 3 adds the squashed skunk). Safety awareness may be inferred from the kit combination of the tire and squashed skunk (Fig. 3). However, the tire alone (Fig. 1 and Fig. 2) does not give the visual impression of the combination (Fig. 3), and the tire (package) alone does not convey the above-quoted information contended by the Examiner. Compare Fig. 1 and Fig. 2 with Fig. 3 of Agapiou, consistent with Agapiou being directed to the kit which has the combination, rather than to just the tire. See also the Appellant's Brief at Paragraph 3, pages 14-16, for a discussion of the Agapiou specification, etc. Regardless, though, Agapiou does not teach the following claim 5 requirement: ...in which the article is used.

As to paragraph 4 of the Examiner's Response to Appellant's argument that Agapiou does not teach particular replicas created by the method steps, the Examiner contends that “these replicas are obvious variations that an ordinarily skilled worker would create to resemble objects for sale to different consumers.” Again, it is respectfully submitted that no one would ever have thought of the method steps of putting rain gear in golf balls (claim 25)

from Agapiou, except for this rejection. Also, no one would have thought to do the same with baseballs, or footballs, etc. (claims 8-15, 25-26, 31) or putting ditty bags, golf bag covers, rain gear, etc. in them (claim 24-26), or putting these within another layer of suggestive packaging like a sleeve for golf balls, (claims 18-19) and so forth. There is no reference that even vaguely suggests the claimed method steps.

This aspect of the Examiner's Response brings focus on another ground for reversing the Final Rejection even if all the Examiner's Response comments were correct. As stated above, the claims are directed to method steps, not apparatus. Agapiou's safety awareness kit apparatus does not teach the claimed method steps of making thematic packaging, i.e., a squashed skunk and tire do not teach particular method steps of making thematic packaging. Regardless, again though, Agapiou does not teach the following claim 5 requirement: ...in which the article is used.

II. CONCLUSION

The rejection of each group of Appellant's claims pursuant to Sec. 102 and Sec. 103 is in error because Appellant's claimed method steps, as a whole, are not disclosed or suggested in the cited reference. No one would ever have thought of putting rain gear in golf balls (claim 25) from Agapiou, etc., except for this rejection, and interpreting the claims consistent therewith, the Final Rejection of the claims should be reversed.

Respectfully submitted,



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Date: March 8, 2001

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